

Application No. 10/707,854  
Amendment dated November 21, 2005  
Reply to Office Action of August 23, 2005

Docket No.: 00131-00281-US1

REMARKS

Method claims 5-15 and product-by-process claim 16 remain pending in this application. Claim 5 is independent, and claim 16 is a multiply dependent product-by-process claim. Device claims 1-4 have been previously withdrawn as being directed to the non-elected invention. No claims have been added, amended, or canceled by this Response.

Withdrawal of the rejection of claims 5-16 under 35 U.S.C. §102(b) as being anticipated by Murakowski et al. "Etchless Fabrication of Slaab Photonic Crystals in Silicon" is requested.

Murakowski et al. is not a proper reference or prior art under either 35 U.S.C. §102(b) or §102(a) ("by another"). Murakowski et al. has a publication date of May 2002 (conference paper from CLEO Conference May 19-25, 2002), and has authorship that is identical to the inventorship of the present application.

The present application has an effective U.S. filing date of April 22, 2003, the filing date of Provisional Application 60/464,353, from which the present application claims benefit under 35 U.S.C. §119(e). This effective U.S. filing date is less than one year from the publication date of the applied art.

Therefore, the applied art is not prior art under either §§ 102(b) or (a).

Accordingly, reconsideration and allowance of claims 5-16 are respectfully requested.

In view of the above remarks, applicant believes that each of pending claims 5-16 in this application is in immediate condition for allowance.

The Examiner is authorized to cancel non-elected claims 1-4 by way of Examiner's Amendment accompanying any Notice of Allowability that might be issued in this application.

Application No. 10/707,854  
Amendment dated November 21, 2005  
Reply to Office Action of August 23, 2005

Docket No.: 00131-00281-US1

Applicants believe that no fee is due with this response. However, if a fee is due, please charge CBLH Deposit Account No. 22-0185, under Order No. 00131-00281-US1 from which the undersigned is authorized to draw.

Respectfully submitted,

By Larry J. Hume  
Larry J. Hume

Registration No.: 44,163  
CONNOLLY BOVE LODGE & HUTZ LLP  
1990 M Street, N.W., Suite 800  
Washington, DC 20036-3425  
(202) 331-7111  
(202) 293-6229 (Fax)  
Attorney for Applicant

429493